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11
12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15
16 SECURITIES AND EXCHANGE
17 COMMISSION,

18 Plaintiff,

19 vs.

20 JAMMIN' JAVA CORP., dba MARLEY
21 COFFEE, SHANE G. WHITTLE,
22 WAYNE S. P. WEAVER, MICHAEL K.
23 SUN, RENE BERLINGER, STEPHEN B.
24 WHEATLEY, KEVIN P. MILLER,
MOHAMMED A. AL-BARWANI,
ALEXANDER J. HUNTER, and
THOMAS E. HUNTER,

25 Defendants.
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Case No. 2:15-cv-08921 SVW (MRWx)

**STATUS REPORT: REGARDING
SEC'S EFFORTS TO SERVE
DEFENDANTS**

In anticipation of the February 29, 2016 initial status conference in this case, Plaintiff United States Securities and Exchange Commission (the “SEC”), provides the following update to the Court on its efforts to serve the Defendants in this matter:

1. Other than Defendant Jammin’ Java Corp. – which has appeared and filed its answer (Dkt. #15) – all Defendants in this case live abroad. Based on the latest available addresses, the remaining Defendants live in the following jurisdictions:

<u>DEFENDANT</u>	<u>JURISDICTION</u>
Shane G. Whittle	British Columbia, Canada
Wayne S.P. Weaver	Bailiwick of Jersey
Michael K. Sun	Bailiwick of Jersey
Kevin Miller	Bailiwick of Jersey
Stephen Wheatley	United Kingdom
Alexander Hunter	United Kingdom
Thomas Hunter	United Kingdom
Rene Berlinger	Switzerland
Mohammed Al-Barwani	Oman

2. The SEC has worked diligently to serve these Defendants through two means that comply with the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Hague Convention”): (a) service by mail and (b) service through the designated governmental authority in the Defendant’s home nation (in Hague Convention parlance, the “Central Authority”).

Service by Mail:

3. The SEC has attempted to serve Defendants living in Jersey, the UK and Canada under Fed. R. Civ. P. 4(f)(2)(C)(ii) which – if international agreement allows

1 – permits service of defendants in a foreign country “using any form of mail that the
2 clerk addresses and sends to the individual that requires a signed receipt.”

3 4. Mail service is allowed under Article 10 of the Hague Service
4 Convention “[p]rovided that the State of destination does not object.” Jersey, the UK,
5 and Canada have not objected to Article 10 and, therefore, the SEC sent service
6 materials to the Clerk’s office for each Defendant residing in those countries. The
7 Clerk’s office sent the materials to those Defendants by UPS and filed its
8 confirmation of shipment on January 6, 2016. (Dkt. #14.)

9 5. The SEC has received notices from UPS reflecting that the Complaint
10 was successfully delivered to residential mailboxes for the following defendants on
11 January 11, 2016: Michael Sun, Stephen Wheatley, Kevin Miller, Alexander Hunter
12 and Thomas Hunter. (Receipts attached as Ex. A.) We have not received similar
13 confirmations for Defendants Whittle and Weaver.

14 6. Of the Defendants served by mail, none has filed an appearance in this
15 case. Only one -- Stephen Wheatley -- has reached out to the SEC through counsel
16 and indicated that he plans to appear and file a responsive pleading.¹ Counsel for
17 Defendants Alexander and Thomas Hunter also contacted the SEC, but did not
18 indicate whether his clients intend to appear or respond to the Complaint.

19 **Service Through the Central Authority:**

20 7. The SEC simultaneously sought to serve the Defendants through the
21 respective Central Authorities of their home countries as provided in the Hague
22 Convention.

23 8. The SEC has forwarded copies of the Complaint and Summons (along
24 with other required supporting materials, including a formal service request) to the
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27 ¹ Wheatley’s counsel informed the SEC that he would like to extend the deadline for
28 his Answer until March 4, 2016. Counsel for the SEC responded that the SEC does
not object to an extension request and that Wheatley could file a motion with the
Court as “unopposed.” Thus far, no motion for an extension has been filed.

1 Central Authorities for Jersey, the UK and British Columbia, Canada. On February 6,
2 2016, we received confirmation from UPS that our Hague service requests were
3 received by each Central Authority. (Notices Attached as Ex. B).

4 9. Out of an abundance of caution – even though they have been served by
5 mail as described above – requests for service through the Central Authority were
6 made for Defendants Wheatley, Sun, Miller, and Alexander and Thomas Hunter.
7 Requests were also made to serve Defendants Whittle and Weaver because we cannot
8 confirm whether mail service was successful for those Defendants.

9 10. Based on our prior experience with serving defendants in these
10 jurisdictions, we anticipate that we will likely hear back from the Central Authorities
11 on their service efforts within 3 months.

12 **Defendants Berlinger and Al-Barwani:**

13 11. The SEC is in the process of determining whether we can serve
14 Defendant Berlinger through the Hague Convention. Switerland has objected to
15 Article 10 of the Convention and – in at least some instances – will not complete
16 Hague Service Requests on behalf of U.S. government agencies (even in civil
17 matters).

18 12. Oman is not a signatory to the Hague Convention and, therefore, the
19 SEC staff is attempting to determine what channels are available for service of
20 Defendant Al-Barwani in Oman consistent with international law.

21 **Potential Motion for Alternative Service:**

22 13. While service through the Hague Convention is in process, that route is
23 potentially time consuming. Therefore, with the hope of minimizing further delay,
24 counsel for the SEC is conferring with its Office of International Affairs to determine
25 whether faster, alternative means of service could be used consistent with
26 international law. If so, the SEC anticipates that it will shortly file a Motion for
27 Alternative Service with the Court pursuant to Fed. R. Civ. P. 4(f)(3). *See, e.g., SEC*
28 *v. Craven*, 2015 WL 9275741, *1 (W.D. Ken. Dec. 18, 2015)(granting SEC's motion

for alternative service by e-mail of defendant in Switzerland where personal service through the Hague Convention would take up to two months and where the Swiss authorities “may still refuse to effect service”).

Summary of Service Status:

14. In sum, Defendants’ service status is as follows:

<u>DEFENDANT</u>	<u>SERVICE STATUS</u>
Shane G. Whittle	<ul style="list-style-type: none"> • Service Materials sent by Clerk of Court on 1/6/2015. No delivery confirmation. • Service materials transmitted to Central Authority (British Columbia Ministry of Justice) on 2/4/2016. Awaiting confirmation of service.
Wayne S.P. Weaver	<ul style="list-style-type: none"> • Service Materials sent by Clerk of Court 1/6/2015. No delivery confirmation. • Service materials transmitted to Central Authority (Attorney General for Jersey) on 2/5/2016. Awaiting confirmation of service.
Michael K. Sun	<ul style="list-style-type: none"> • Served by Mail on 1/11/2016. • In addition, service materials transmitted to Central Authority (Attorney General for Jersey) on 2/5/2016.
Kevin Miller	<ul style="list-style-type: none"> • Served by Mail on 1/11/2016. • In addition, service materials transmitted to Central Authority (Attorney General for Jersey) on 2/5/2016.
Stephen Wheatley	<ul style="list-style-type: none"> • Served by Mail on 1/11/2016. • In addition, service materials transmitted to

	UK Central Authority on 2/5/2016.
Alexander Hunter	<ul style="list-style-type: none"> • Served by Mail on 1/11/2016. • In addition, service materials transmitted to UK Central Authority on 2/5/2016.
Thomas Hunter	<ul style="list-style-type: none"> • Served by Mail on 1/11/2016. • In addition, service materials transmitted to UK Central Authority on 2/5/2016.
Rene Berlinger	<ul style="list-style-type: none"> • Not served yet. • SEC determining whether Hague Service is possible. • Investigating alternative service options.
Mohammed Al-Barwani	<ul style="list-style-type: none"> • Not served yet. • Investigating alternative service options.
Jammin' Java, Corp.	<ul style="list-style-type: none"> • Served through counsel on 11/18/2015. Answer filed.

Respectfully submitted,

/s/ Timothy S. Leiman

Timothy S. Leiman

Attorney for Plaintiff

Securities and Exchange Commission

Dated: February 12, 2016